

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D. C.

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Joint Application of

AMERICAN AIRLINES, INC.
and
LINEA AEREA NACIONAL CHILE,
S.A. (LAN CHILE)

OST-97-3285

under 49 U.S.C. §§ 41308 and 41309 for
approval of and antitrust immunity
for alliance agreement

OST-97-3285-24

Application of

LINEA AEREA NACIONAL CHILE, S.A.
(LAN CHILE)

OST-97-2982

-19

for an exemption under 49 U.S.C. § 40109

Joint Application of

AMERICAN AIRLINES, INC. and
LINEA AEREA NACIONAL CHILE, S.A.
(LAN CHILE)

Undocketed

for a statement of authorization under
14 C.F.R. Parts 207 and 212 (reciprocal
codeshare services)

JOINT REPLY OF AMERICAN AIRLINES, INC.
AND LINEA AEREA NACIONAL CHILE, S.A. (LAN CHILE)

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March 24, 1998

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American Airlines, Inc. and Linea Aerea Nacional Chile,
S.A. (Lan Chile), pursuant to Order 98-2-21 (February 20, 1998),

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hereby reply to the answers submitted on March 13, 1998 by Continental Airlines, Inc., Delta Air Lines, Inc., and United Air Lines, Inc (collectively, "opposing carriers"). The Department should promptly grant antitrust immunity, exemption authority, and codesharing authorizations to enable American and Lan Chile to implement their proposed alliance for the benefit of consumers and communities, and in order to enhance competition between the United States and Chile.'

ARGUMENT

I. INTRODUCTION

The opposing carriers are engaged in a cynical effort, supported by speculative doomsday rhetoric and little more, to invoke DOT assistance and force Lan Chile to do business with them instead of with American. Their motivations are transparent, and their arguments amount to a manifesto for selective government intervention into the free market process.

This is an era of open skies, innovative alliances, and diminishing government restrictions on the enormous potential that liberalized international aviation markets offer. In 1992, the Department recognized that a pioneering open skies agreement

¹ It is worth noting that the opposing carriers add nothing new to what they said in their October 22, 1997 answers in Docket OST-97-2982.

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in conjunction with a major strategic airline alliance could provide a critical beachhead for transatlantic open skies:

We look to our Open Skies Accord with the Netherlands and our approval and grant of antitrust immunity to the [KLM-Northwest] Agreement to encourage other European countries to liberalize their aviation services so that comparable opportunities may become available to other U.S. carriers.

Order 92-11-27 (November 16, 1992), at 14.²

American and Lan Chile believe that the U.S.-Chile open skies accord constitutes a similar breakthrough for the open skies policy in South America. The open skies accord, in combination with the American-Lan Chile alliance, will accelerate South American carriers' and governments' participation in the emerging global alliance networks.

A review of recent developments that have occurred since Lan Chile and American signed their agreements in September 1997 reflects the potential of this new environment:

- DOT announced its tentative approval of the American-TACA Group codeshare alliance;³

² See also Statement of Secretary Federico F. Peña before the Senate Commerce Committee, July 11, 1995 ("[o]ur policy statement recognized that the trend towards globalization of air service through efficiency-enhancing networks and alliances is here to stay, and that this development offers great public benefits for all nations").

³ Order 97-12-35 (December 31, 1997).

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- United announced VARIG's entry into the Star Alliance and implemented a major codeshare alliance with VARIG,⁴ and applied to the Department for broad authority to codeshare with Mexicana;⁵
- Continental was awarded Newark-Santiago authority;⁶
- Delta announced major expansion plans in South America and applied to DOT for broad operating authority;⁷
- Delta announced that it will offer 8,000 seats to Latin America;⁸
- Delta announced a 10-year marketing and codeshare alliance with Aeroperu, as well as the acquisition of a significant equity interest in Aeroperu;⁹

⁴ United Air Lines Press Release, October 22, 1997.

⁵ Joint Application of United Air Lines, Inc. and Compania Mexicana de Aviacion, S.A. de C.V. (OST-98-3322), January 12, 1998.

⁶ Order 98-1-22 (January 29, 1998).

⁷ Application of Delta Air Lines, Inc. for a certificate of public convenience and necessity (OST-97-3218), December 10, 1997.

⁸ "Delta To Offer Approximately 8,000 Weekly Seats to Latin America With Start of New Daily Flights," Press Release, February 9, 1998.

⁹ "Delta and Aeroperu Enter 10-Year Marketing Agreement; Delta Makes Minority Equity Investment in Aeroperu," Press Release, March 10, 1998.

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- Delta announced a five-year marketing and codeshare alliance with Aeromexico;¹⁰
- Delta announced a codeshare agreement with Aeropostal of Venezuela;¹¹ and
- Delta announced new Atlanta-Caracas and Atlanta-Lima service.¹²

U.S. policy has been the catalyst for these sweeping changes in the industry, as well as for the emergence of global, antitrust-immunized alliances, such as United-Lufthansa-SAS, Delta-Swissair-Austrian-Sabena, and KLM-Northwest.

The opposing carriers generally have been strong proponents of market liberalization to permit such initiatives when they are able to exploit these changes for their own commercial benefit. In 1995, Delta, and in 1996, United argued that, not only is there nothing sinister about the link between an open skies accord and an alliance agreement, but that the combination can trigger a positive domino effect for open skies on a

¹⁰ "Delta and Aeromexico Plan Expanded Relationship, Including a Five-Year Marketing Agreement," Press Release, March 10, 1998.

¹¹ "Delta Air Lines, Aeropostal Sign Agreement; Carriers Will Provide Code-Sharing Flights," Press Release, March 3, 1998.

¹² "Delta Air Lines Receives Governmental Approval to Start New Service to Caracas," Press Release, March 10, 1998; "Delta Air Lines To Start Service Connecting Atlanta With Lima, Peru," Press Release, February 20, 1998.

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continent-wide basis.¹³ When seeking the Department's approval of their respective transatlantic alliances, United and Delta strongly advocated this view.¹⁴

On the other hand, it seems that, when the opposing carriers do not succeed in the marketplace, they ask DOT to turn back the clock and intervene. That is the case here.

II. THE OPPOSING CARRIERS IGNORE BOTH THE PRO-COMPETITIVE IMPLICATIONS OF A U.S.-CHILE OPEN SKIES AGREEMENT AND THE DISASTROUS IMPLICATIONS OF A FAILURE TO GRANT THE LAN CHILE-AMERICAN APPLICATIONS

The opposing carriers all but ignore the fact that on October 28, 1997, the Governments of the United States and Chile initialed an historic open skies agreement. The open skies

¹³ See Joint Application of Delta Air Lines, Inc. et al. (OST-95-618), September 8, 1995, at 8 (arguing that Switzerland, Belgium, and Austria would view DOT's denial of Delta's application as "antithetical to the spirit of the Open Skies Agreements") & 20-21 (quoting DOT's same language from Order 92-11-27 (November 16, 1992), at 4); Joint Application of United Air Lines, Inc. and Deutsche Lufthansa, A.G. (OST-96-1116), February 29, 1996, at 23 ("[o]pen skies with Germany, coupled with a fully implemented Alliance Expansion Agreement, will provide a significant commercial incentive to other European nations to reach liberal, open-entry bilateral agreements with the United States").

¹⁴ In fact, United and Delta went even further, arguing that DOT's approval of KLM-Northwest "also implied a favorable treatment of future applications by other U.S. and foreign airlines in exchange for liberal aviation accords." Joint Application of Delta Air Lines, Inc. et al. (OST-95-618), September 8, 1995, at 8; Joint Application of United Air Lines, Inc. and Deutsche Lufthansa, A.G. (OST-96-1116), February 29, 1996, at 22 n.11.

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agreement promises a new era of competition in the U.S.-Chile market and substantial public benefits to the traveling and shipping public.

The Lan Chile-American alliance provides the impetus for the opening of the currently-restricted U.S.-Chile market, just as the United-Lufthansa alliance was the driving force behind the opening of the U.S.-Germany market. Without the alliance, the status quo is maintained. By the same token, a denial of the Lan Chile-American alliance would be an outright rejection of open skies with Chile.

The proposed arrangement between American and Lan Chile is fully consistent with U.S. international aviation policy, which has encouraged global partnerships between U.S. and foreign carriers for the benefit of consumers and competition. Indeed, in the case of a carrier such **as** Lan Chile, the proposed alliance is vital to allow it to realize new opportunities under open skies and to provide new price, quality, and service options to consumers in the global marketplace.

The American-Lan Chile alliance will offer a myriad of benefits:

- A broad network, comprising some 4,000 potential city-pairs, making the world more accessible to consumers with new and convenient routings, which will compete with the other alliances already immunized by the Department and

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with codeshare arrangements in the Americas and elsewhere, such as those between United and VARIG, the largest carrier in South America, between United and Mexicana, between Delta and Transbrasil, and between Delta and Aeroperu.

- A wide choice of routings and schedules.
- Seamless, coordinated connections between alliance flights, including single tickets and through-handling of baggage and cargo.
- Service offered by two airlines known throughout the world for their commitment to high quality service and innovation.
- Coordination between two excellent frequent flyer programs, offering a wide range of opportunities both for earning mileage credit and for enjoying travel awards.
- More value, made possible through the synergies and efficiencies that the alliance will create.

When it initialed the U.S.-Chile open skies agreement last October, the Government of Chile made clear that the market cannot be truly "open" unless Chilean carriers are assured of effective access to U.S. traffic through alliances with other carriers. See Memorandum of Consultations, October 28, 1997. The Government of Chile's position reflects the fact that new service opportunities for Chilean carriers under an open skies

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agreement - and under the existing 1989 U.S.-Chile agreement, which contains a full codeshare provision -- are not meaningfully available unless Chilean carriers are able to enter into full cooperative alliances with U.S. carriers of their choosing. Otherwise, the skies would be "open" in name only.¹⁵

If DOT were to reject American and Lan Chile's applications, the Department would, effectively, be repudiating open skies with Chile as well as U.S. obligations under the 1989 agreement. Such a step would seriously damage the credibility of the open skies policy in Latin America. Latin American carriers and governments, already suspicious following the prolonged and unresolved TACA experience, would conclude that open skies is no more than a U.S. tool for international market restructuring in favor of the large U.S. carriers. Consequently, Latin America would entrench, not dismantle, protectionist barriers.

When it tentatively approved the American-TACA Group arrangement, the Department emphasized the critical importance of open skies agreements:

[T]hese accords assure the most liberal operating environment for air services and give any carrier from either country the right to serve any route

¹⁵ This is not speculation: the experience of the TACA Group of carriers and their governments validates this concern beyond any doubt.

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between the two countries and beyond. These agreements place no limits on airline capacity and carriers are free to charge any price unless both countries disapprove. The foreign applicants' national authorities undertook to join the United States in open-skies aviation relations.

For these reasons, open skies is a critical element of our international aviation policy. Therefore, unless there are adverse competitive impacts that cannot be mitigated so as to promote the consumer benefits to be gained by open skies, total rejection of cooperative arrangements provided for under an open-skies regime has the potential to frustrate if not cancel, the overall benefits available through an open-skies regime.

Order 97-12-35 (December 31, 1997), at 25-26 (emphasis added).

There are no adverse competitive impacts sufficient to defeat the American-Lan Chile alliance, and, thereby, defeat the open skies agreement initialed last year between the United States and Chile. The Department should reject the self-serving and anticompetitive stance by the opposing carriers, and should grant antitrust immunity (as well as exemption and codesharing authority) to American and Lan Chile forthwith.

III. THE OPPOSING CARRIERS' ARGUMENTS ARE HYPOCRITICAL AND WITHOUT MERIT

A. CONTINENTAL

Continental, which in January entered into a global strategic alliance with Northwest Airlines, Inc.,¹⁶ and is now

¹⁶ "Continental and Northwest Airlines Form Long-Term Strategic Global Alliance," Press Release, January 26, 1998.

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contemplating what would be the world's largest combination of carriers (Northwest-KLM-Continental-Air France-Alitalia-Virgin Atlantic) ,¹⁷ nonetheless asks the Department to withhold approval of the American-Lan Chile alliance. To support its position, Continental cites the combined market shares of American and Lan Chile in the U.S.-Chile market (including HHI calculations); American's position at the Miami gateway; the relatively small number of passengers in U.S. -Chile markets other than Santiago; American's alliances with other carriers in Latin America; and a pleading submitted by the Department of Justice in the American-TACA Group proceeding (OST-96-1700). As we show below, none of these arguments provides a legitimate basis for the Department to withhold antitrust immunity from the American-Lan Chile alliance, and to deny the public the benefits that this alliance (and open skies) will provide in the marketplace.

Continental's real motivation is to gain government help and protection. Continental seeks to have the Department disqualify American as Lan Chile's partner, thereby forcing Lan

¹⁷ See J. Campbell & D. Meyer, CO, NW CEOs: Shifting The Airline Power Structure, Business Travel News, February 23, 1998, at 1 (interview with Continental chairman and CEO Gordon Bethune) (calling the Northwest-Continental transaction "a virtual merger," and stating that "[i]f you did a KLM-Air France-Northwest-Continental-Alitalia it would be the biggest in Europe, bigger than the Star Alliance. Virgin **stays** with us too. That's maybe 12 months away.").

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Chile to enter into an arrangement with Continental. Continental also seeks to prevent open skies between the United States and Chile, thereby protecting Continental's Newark-Santiago service from traffic diversion. Continental openly admits to such an agenda in its answer (p. 16) (additional entry under open skies "would divert traffic from Continental's nonstop Newark-Santiago start-up service without providing any measurable service enhancement").

As Lan Chile stated in its consolidated reply of October 31, 1997 in OST-97-2982 with respect to the American-Lan Chile codesharing applications, Lan Chile met with all three opposing carriers -- including Continental -- to discuss possible arrangements with them. Subsequently, Lan Chile made a unilateral commercial decision to enter into an alliance with American. Among other things, the opposing carriers do not offer similar commercial opportunities to Lan Chile and its passengers. Continental offers no meaningful connections at Miami and apparently has concluded that its southern hub, Houston, is not the most sensible gateway to Chile, as Continental sought -- and was awarded -- Newark-Santiago authority in the 1997 U.S.-Chile Combination Service Proceeding, Order 98-1-22 (January 29, 1998). Lan Chile does not serve either Houston or Newark, and would have to restructure its

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entire U.S. route system in order to create connections at those cities.

Having failed to achieve its own alliance with Lan Chile through the normal course of a free, competitive process (assuming it was even serious about doing so), Continental now asks the U.S. Government to intervene and, effectively, force Lan Chile to do business with Continental. The Department should reject this outrageous invitation.

We now turn to Continental's specific arguments against the proposed alliance. While the combined market shares of American and Lan Chile in the U.S.-Chile market are relatively high, open skies will provide unlimited opportunities for new services by Continental, Delta, United, and any other interested U.S. or Chilean carrier. We are aware of no barriers to entry at Santiago, or at any other airport in Chile.

Past market concentration numbers from a restricted market are not relevant to future open skies markets with no barriers to entry. As the Department stated in granting antitrust immunity to United and Lufthansa, "concentration figures are not conclusive Individual airline nonstop city-pair markets usually have high levels of concentration, since most nonstop markets are served by only a few airlines." Order 96-5-12 (May 9, 1996), at 19-20. HHI figures are likewise not a relevant consideration in open skies markets with no entry

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barriers. See Joint Reply of United Air Lines, Inc. and Deutsche Lufthansa, A.G. (OST-96-1116), April 12, 1996, at 11-12 (sharply criticizing TWA for attempting an HHI exercise against the United-Lufthansa immunity application). There, United said that "the HHI figures proffered by TWA . . . are in no way probative" because they omitted "bountiful 'uncommitted entrants'". Id. Continental's HHI figures against the American-Lan Chile alliance not only omit "bountiful" potential entrants, but also omit actual participants, such as the United-VARIG codeshare, for example, which provides highly competitive U.S.-Chile service via third-country intermediate points.

We also suspect that Continental would argue strenuously against the use of market concentration figures to defeat its proposed alliance with Northwest. As shown in American's answer of February 6, 1998 in the American-TACA Group proceeding (OST-96-1700), there are six city-pairs in the domestic U.S. market in which Continental and Northwest collectively operate 100% of the nonstop frequencies (Cleveland-Detroit, Cleveland-Minneapolis/St. Paul, Detroit-Houston, Houston-Memphis, Houston-Minneapolis/St. Paul, and Minneapolis/St. Paul-New York), and another in which they operate 86% (Detroit-New York). Two of these seven overlap routes - Minneapolis/St. Paul-New York and Detroit-New York - involve service at slot-constrained LaGuardia Airport, where opportunities for new entry are limited, in

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contrast to the airports in Chile where there are no such limits.

These seven Northwest-Continental "monopoly markets" (to use Continental's own terminology in its pleadings against American's alliances) include some of the most heavily traveled U.S. domestic city-pairs and, in addition, are ones with high concentrations of time-sensitive business travelers for whom connecting service would clearly be a second choice. As for the size and significance of the U.S. domestic city-pairs that would be most directly affected by a Continental-Northwest alliance, we note that Detroit-New York alone has more annual passengers (1.4 million) than all U.S.-Chile city-pairs combined.¹⁸

In short, if the alliance proposed by American and Lan Chile for service between the United States and Chile were deemed to present competitive issues requiring its disapproval, then the massive alliance announced by Continental and Northwest should be rejected out-of-hand by U.S. competition authorities.

As to Continental's other arguments, American's position at the Miami gateway does not justify denial of the American-Lan Chile alliance. To the contrary, American's connecting network at Miami is an essential predicate for Lan Chile's commercial

¹⁸ As shown by T100 data for 1996, there were 379,932 on-board passengers on nonstop or through flights between the United States and Chile. American's share was 39.5%.

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decision to enter into a partnership with American rather than with Continental or the other opposing carriers. Without access to traffic flows at Miami, Lan Chile would not gain sufficient benefits to support an open skies agreement between the United States and Chile. Continental itself characterizes Miami as the "key U.S. gateway for the rest of Latin America," and acknowledges that Miami is "the predominant gateway to Chile" (p. 5) .¹⁹

Continental and the other opposing carriers argue that market shares and, in the case of American, hub share at Miami make for a virtual per se anticompetitive situation. Each of the opposing carriers, however, controls a significant (and arguably dominant) share at a U.S. hub airport. In 1997, Continental controlled 78.6% of enplanements at Houston Intercontinental Airport, while its equity partner Northwest Airlines controlled 80.4% of enplanements at Detroit Metropolitan Airport and 84.5% of enplanements at Minneapolis/St. Paul International Airport. Delta controlled 80.2% of enplanements at Atlanta Hartsfield Airport, 94.1% of enplanements at Cincinnati International Airport, and 76.8% of

¹⁹ Elsewhere, Continental has expressed less concern about Miami, stating that Continental is "strategically positioned for trans-continental travel . . . to Latin America . . . via its Houston and Newark gateways." "Continental Airlines Announces Non-Stop Service Between New York/Newark and Santiago, Chile," Press Release, January 29, 1998.

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enplanements at Salt Lake City. United, meanwhile, controlled 68.6% of enplanements at Denver.²⁰ Would the opposing carriers concede that these shares are per se anticompetitive and should disqualify them from codesharing at those points? One assumes not.

The fact that American chose to invest billions of dollars in developing the Miami gateway, while its competitors chose to invest elsewhere, should not preclude Lan Chile and American from entering into an alliance using Miami as the key connecting point. In contrast to a number of other antitrust-immunized alliances, there are no facilities constraints at issue in the American-Lan Chile proposal. The Department approved the United-Lufthansa alliance despite the formidable entry barrier posed by slot controls at Frankfurt; similar barriers exist with respect to the Northwest-KLM alliance at Amsterdam. If those arrangements can enjoy antitrust immunity, in the face of recognized barriers to entry, there should be no question that the American-Lan Chile alliance should be approved under an open skies regime with Chile and in the total absence of entry barriers at Miami, Santiago, or any other relevant airport.

²⁰ See Salomon Smith Barney, Airline Competition at the 50 Largest U.S. Airports - Update, March 12, 1998 (based on USDOT Form 41 data).

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Continental also asserts, rather curiously, that the American-Lan Chile alliance should be disallowed because there are relatively small numbers of passengers that would benefit in markets other than Santiago (p. 7). In effect, Continental seems to be urging that the proposal here is not worthy of approval because it is too small; in other proceedings, such as American-British Airways (OST-97-2058), Continental has argued that approval should be withheld because the proposed alliance is too large. In any event, the numbers cited by Continental are from a time when less convenient, interline double-connection service was the only available option. Moreover, such historical numbers are clearly understated because of the difficulty in gathering international interline data, and the common practice for passengers to "break" interline itineraries on these routes by staying at the gateway for longer than a connecting layover. The introduction of convenient, on-line service by the American-Lan Chile alliance is certain to stimulate the double-connection market, adding to the pro-competitive impact of the proposed transaction.

Continental's (and the others') professed concern about the cumulative impact of American's existing and proposed alliances with carriers in Latin America (Continental Answer, at 8-14) is simply doomsday posturing and provides no basis for denial. There is no linkage between the American-Lan Chile arrangement

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and any other alliance that American or Lan Chile has or is contemplating in Latin America or in any other region.²¹

American's relationships are "appropriately examined by the Department in the context of their respective applications."

Order 97-12-35 (December 31, 1997), at 31.

Finally, Continental asserts that the Department of Justice, because it expressed "concern" (but did not oppose) the American-TACA arrangement, would similarly question the public benefits of the American-Lan Chile alliance. The Department of Justice did not submit an answer in this docket, and American and Lan Chile are not aware of any proceeding in which the Department has assumed to know what a non-party might have said, had it chosen to file an answer, which it did not. Continental's attempt to insert a DOJ pleading from another docket into this proceeding should be rejected outright.

B. DELTA

Delta, like Continental, has little credibility in complaining about alliances of its competitors. In October 1997, in announcing a "summit" it was hosting with 22 affiliated airlines to discuss globalization, Delta called itself "the

²¹ Continental's paranoia has reached new depths: it now sees danger in an effort by Lan Chile and a few other Latin American carriers to jointly acquire aircraft. (p. 12 n.18). This effort, which has been applauded by the industry, is irrelevant to this proceeding, as any responsible observer would know.

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world-recognized leader in code-sharing/blocked-space arrangements."²² Delta enjoys antitrust immunity with three European carriers (Swissair, Sabena, and Austrian Airlines), and has entered into partnerships with numerous other airlines throughout the world, including Aer Lingus, Aeroflot, Aeromexico, Air Jamaica, China Southern, Finnair, Korean Airlines, Malev, Singapore Airlines, TAP Air Portugal, and Transbrasil.

Delta has embarked on a "major service expansion into Latin America,"²³ including the recently-announced acquisition of an equity interest in Aeroperu,²⁴ a 10-year marketing alliance with Aeroperu, a five-year "strategic marketing agreement" with Aeromexico and a codeshare arrangement with Aeropostal of Venezuela. Delta has recently started service, or is planning to start service, to 14 countries in Latin America, including Peru, Venezuela, Brazil, Chile, Argentina, Colombia, Uruguay, Paraguay, Belize, Bolivia, Guatemala, Panama, Costa Rica, and El

²² "Delta Air Lines To Host 22 Airlines For Summit To Discuss Globalization," Press Release, October 2, 1997.

²³ Application of Delta Air Lines, Inc. for a certificate of public convenience and necessity (OST-97-3218), December 10, 1997, at 3.

²⁴ Conversely, the American-Lan Chile alliance is not a merger, de facto or de iure, nor is American acquiring any equity interest in Lan Chile.

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Salvador.²⁵ In support of this massive new market entry, Delta told the Department that

[t]he creation of a new gateway at Atlanta - the largest airline hub in the world and the centerpiece of Delta's Latin American expansion program - will provide significant public benefits through enhanced intergateway competition with American's hubs at Miami and Dallas/Ft. Worth, Continental's hubs at Houston and Newark, and United at Miami.²⁶

Nonetheless, Delta takes the patently inconsistent position that the American-Lan Chile alliance "would create an impervious barrier to competition" (p. 4). When just this type of rhetoric was used by TWA against the Delta-Swissair-Sabena-Austrian alliance -- which resulted in a 100% monopoly of U.S.-Austria flights and a 67% share of nonstop U.S.-Switzerland flights -- Delta countered that

any other carrier's ability to serve the three European countries . . . is now enshrined in the Open Skies agreements the U.S. has concluded . . . TWA has contrived a series of rhetorical and legalistic arguments designed to derail the proposed alliance. The arguments have no basis in law, fact or policy and should be rejected.

Joint Reply of Delta Air Lines, Inc., et al. (OST-95-618), November 20, 1995, at 5.

²⁵ "Delta To Offer Approximately 8,000 Weekly Seats To Latin America With Start of New Daily Flights," Delta Air Lines Press Release, February 19, 1998.

²⁶ Application of Delta Air Lines, Inc. for a certificate of public convenience and necessity (OST-97-3218), December 10, 1997, at 9.

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Like Continental, Delta cites American's market share in the U.S.-Chile market, its strength at the "key Miami gateway," its alliances with other regional carriers, and the Department of Justice pleading in the American-TACA Group docket. As shown with respect to Continental, none of these arguments justifies disapproval of the American-Lan Chile alliance or the defeat of open skies between the United States and Chile.

And similar to Continental, Delta reveals that its true agenda is to have the Department disqualify American as a Lan Chile partner so that Delta can usurp that role: "[i]f the American-Lan Chile arrangement is disapproved, Delta would pursue an arrangement with Lan Chile that would maximize competition between the United States and South America, particularly against American" (p. 10). But Delta had its opportunity to enter into an alliance with Lan Chile, and was not chosen because it cannot offer the benefits and meaningful access to U.S. points that American can offer. It should be evident that an alliance relying on Atlanta as the principal U.S. gateway does not make sense for Lan Chile. VARIG obviously reached the same conclusion when it dropped Delta in favor of an alliance with United.²⁷

²⁷ For example, Delta's proposed beyond-Miami service to its hubs at Atlanta and Cincinnati (p. 10) would relegate most beyond-
(continued...)

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Just as the Department should not force Lan Chile into an unjustifiable relationship with Continental, it should not force Lan Chile to enter into an unjustifiable alliance with Delta.²⁸

C. UNITED

United, which stands at the center of the global Star Alliance, has little credibility in opposing an immunized alliance between American and Lan Chile. United holds antitrust immunity from the Department with respect to three different airlines -- Lufthansa, SAS, and Air Canada. United also has codeshare arrangements with numerous other carriers serving Mexico, the Caribbean, South America (including Chile itself), Europe, the Middle East, Asia, and the Pacific. These carriers include VARIG, Aeromexico, Transportes Aeromar, Mexicana, ALM, Cayman Airways, National Airlines of Chile, British Midland, Emirates, Saudi Arabian Airlines, Air-India, Thai International, Ansett (Australia), Kendall Airlines, Air New Zealand, and Ansett (New Zealand).

(...continued)

gateway passengers to multiple connections, and deny them the principal benefits of an immunized alliance.

²⁸ Perhaps if Delta had capitalized on the opportunity to establish a Miami hub and a South American network in the wake of the original Pan American bankruptcy, it would not now be asking DOT to intervene on its behalf.

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On October 22, 1997, in announcing that VARIG is joining the "Star Alliance family," United stated that "[w]ith flights to every major destination in South America, VARIG opens up an entire continent to Star Alliance customers, providing increased global recognition and a wide range of other benefits."²⁹ United noted that VARIG

is the largest airline in Latin America, serving every major city on the continent, as well as major capital cities on four others With the addition of VARIG, the six Star Alliance airlines now employ more than 230,000 people and serve 642 destinations around the world. Total revenue for the six Star Alliance airlines in 1996 was \$45.7 billion. The Star Alliance airlines transport 184 million passengers annually, with 6,692 daily departures on 1,446 aircraft.

Id.

In addition, United has a broad codeshare alliance with Mexicana, which it is seeking to expand to include all of Mexicana's services beyond Mexico to points in Central and South America, including Chile. Joint Application of United Air Lines, Inc. and Compania Mexicana de Aviacion, S.A. de C.V. (OST-98-3322), January 12, 1998. United also recently announced a broad codeshare alliance with All Nippon Airways, a foreign

²⁹ United Air Lines Press Release, October 22, 1997.

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carrier serving Japan and Asia, a region where United has long held a dominant position.³⁰

Despite its own alliances, United asks the Department to disapprove the American-Lan Chile proposal, in large measure to avoid the consequences of United's own decision not to build a Miami hub. Throughout its pleading, United complains about "American's dominant position at the strategic Miami gateway" (p. 5); "the fact that only American has a hub at Miami" (p. 16); "Miami's unique geographic location" (p. 24); and so on. United goes so far as to state that "if the Department allows American to enter into alliances with most of the major foreign carriers in Latin America, United's ability to operate profitably a network of Miami-Latin America services for local passengers will be seriously eroded" (p. 30).

United's ability to operate a network of Miami-Latin America services is not related to American's alliances at Miami, but to whether United chooses -- as American did -- to invest billions of dollars in equipment, facilities, personnel, and other resources to build a hub at Miami. Following the demise of Eastern Air Lines and Pan American World Airways in the early 1990s, Miami was wide open for any carrier wishing to

³⁰ "United Airlines and All Nippon Airways Announce Marketing Alliance," Press Release, March 16, 1998.

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expand service there to do so. While American had obtained certain limited-entry U.S. -South America routes from Eastern in the American/Eastern Route Transfer, Order 90-5-5, May 3, 1990, United soon thereafter secured an equivalent if not superior package of U.S.-South America routes from Pan Am in the United/Pan Am Route Transfer, Order 92-7-9, July 10, 1992.

Rather than investing in a Miami hub, United chose to take its resources elsewhere, particularly to Asia, where United expanded its services under the protection of a U.S.-Japan agreement that precluded a competitive response from American and others. Later, United chose to devote its resources to building an alliance with Lufthansa, which it is now expanding into the global Star Alliance with SAS, Air Canada, Thai Airways International, and VARIG (the largest carrier in all of South America). United is perfectly capable of making its own strategic decisions -- and of living with the consequences of those decisions -- without regulatory interference by the Department with the alliances of its competitors.³¹

³¹ Particularly interesting is United's complaint that "[i]n each nonstop city pair where American and its alliance partners will operate, they will have hubs at both ends of the route, enabling them to operate more frequencies at higher load factors than United, threatening United's ability to serve the routes profitably." (pp. 30-31). This is precisely the situation that United and Lufthansa enjoy on the Chicago-Frankfurt route, a segment that Lufthansa has called "the single most important route between the U.S. and Continental Europe." Application of (continued...)

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United's assertions that the American-Lan Chile alliance will not provide sufficient public benefits so as to justify the grant of antitrust immunity are simply not true. Under their proposed alliance, the applicants will provide a broad array of new service options to the public, not only in gateway-to-gateway markets (such as New York-Santiago and Los Angeles-Santiago, which American does not serve, and Dallas/Ft. Worth-Santiago, which Lan Chile does not serve), but in beyond markets throughout the United States which Lan Chile does not serve, and in beyond markets throughout Chile which American does not serve.

These are precisely the types of new and expanded service opportunities that the Department encouraged in adopting its international air transportation policy statement in 1995, and that United itself provides through its own antitrust-immunized alliances with Lufthansa, SAS, and Air Canada, and its own codeshare arrangements with numerous other foreign carriers throughout the world. The American-Lan Chile alliance will

(...continued)

Lufthansa for O'Hare exemption slots (OST-98-3552), February 24, 1998, at 3. United and Lufthansa have proposed a fourth daily nonstop frequency on this route, threatening the continuation of American's single daily nonstop. There is no principled basis for the Department to grant immunity to United and Lufthansa, but to deny immunity to American and Lan Chile, based on the creation of a hub-to-hub city-pair.

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substantially benefit the public by expanding price, service, and quality options, notwithstanding United's anticompetitive and unprincipled assertions to the contrary.

IV. THE OPPOSING CARRIERS' COMMENTS OVERLOOK LAN CHILE'S PERSPECTIVE AND ITS ROLE IN THIS ALLIANCE

As part of their campaign of internecine warfare with American, the opposing carriers disparage Lan Chile as an ineffectual pawn in an American scheme to conquer Latin carriers and dominate the region. United goes so far as to accuse Lan Chile of "selling out" to American (p. 32). In effect, they ask the Department to save Lan Chile from itself.

This attitude is condescending and xenophobic. Lan Chile, as a public company whose shares are listed on the New York Stock Exchange, is accountable ultimately to its shareholders.³² Thus, Lan Chile's decision to form an alliance with American reflects Lan Chile's selection of the best partner available based on sound commercial criteria.³³ The bleating of the opposing carriers does not change that reality.

³² "Lan Chile . . . Announces Consolidated Fourth Quarter And Year-End Audited Results For The Period Ended December 31, 1997," Press Release, March 20, 1998 (announcing a 67.3% increase in Lan Chile's net income during 1997).

³³ United states that it is "in the business of trying to operate profitably so that it can maintain good paying jobs for its employees, reinvest in its business, and provide a fair return to its shareholders" (p. 31). Incredibly, United then asserts that (continued...)

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Lan Chile met with United, Delta, and Continental to discuss a possible marketing alliance. However, each failed to make a sufficiently attractive proposal to Lan Chile. As discussed above and in the Consolidated Reply of Lan Chile in OST-97-2982 (October 31, 1997), their own actions and inaction disqualify them as sensible codeshare partners for Lan Chile.

United, Delta, and Continental, nevertheless, urge DOT to prevent Lan Chile from doing business with the one carrier whose domestic route system will allow Lan Chile to offer the optimal on-line service to its passengers. United acknowledges that "there is no real alternative to Miami as a gateway to Latin America" (p. 24). Continental recognizes that only American has a strong Miami link (p. 13). Despite these realities, the opposing carriers want to prevent Lan Chile from codesharing with the only carrier with which it can establish a significant connecting complex at Miami. There is no way that such a negative step could be in the public interest. Although the

(...continued)

Lan Chile should eschew an alliance with American, even though it "makes more economic sense," than forming an alliance with United that "would certainly be less profitable." (p. 32). Lan Chile also is entitled to pursue a profit-maximizing strategy on behalf of its employees and shareholders and for capital reinvestment purposes. United's astonishing double standard epitomizes the opposing carriers' position: that the Department should assist them to make money while interfering with Lan Chile's right to do the same.

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opposing carriers say that their imaginary alliances with Lan Chile would be pro-competitive, Lan Chile cannot and will not be corralled into an inferior alliance with one of those carriers just because they claim that they need such an alliance in order to allow them to prosper in an open skies market.

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CONCLUSION

The American-Lan Chile alliance agreement should be promptly approved, and antitrust immunity should be promptly granted, under 49 U.S.C. §§ 41308 and 41309. Codesharing authorizations and related exemptions also should be granted, under 14 C.F.R. Parts 207 and 212 and 49 U.S.C. § 40109. The alliance is consistent with the public interest, enhances competition, and furthers the fundamental U.S. foreign policy objective of achieving open skies agreements between aviation bilateral partners.

Respectfully submitted,

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